**HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Civil Suit No. 242 of 1995**

**Judgment reserved on 25.4.2006**

**Date of decision : 10.5.2006**

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**Sushima Kishandev Kaushal …. Plaintiff**

**Versus**

**The Council for Tibetan Education ….. Defendant.**

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**Coram**

**The Hon'ble Mr. Justice : Surjit Singh, Judge**

**Whether approved for reporting?**

**For the plaintiff : Mr. D.D. Sood, Sr. Advocate, with Mr. Sunil Awasthi, Advocate.**

**For the defendant: Pt. Om Parkash & Mr. Harish Behl, Advocates.**

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**Surjit Singh, Judge**

Plaintiff Smt. Suhshima Kishandev Kaushal has filed the present suit for declaration and possession of certain property, described in the following sentence, pleading the following cause of action. The plaintiff purchased land measuring 14 Kanals, 11 Marlas, bearing Khasra Nos. 1208/1153, 1089, 1061, 1152/1990, along-with the super structures standing thereon and land measuring 5337.25, bearing Khasra Nos. 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606 and 607, situated in Dharamshala,

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**Whether reporters of Local Papers may be allowed to see the Judgment?**

District Kangra in the year 1962. The sale consideration was paid by the plaintiff out of her own funds and some portion of the money was contributed by her father-in-law late Shri Paras Ram Kaushal. Mutations were also entered and attested in favour of the plaintiff. Late Smt. Raj kumari Bhardwaj, who was the mother of the plaintiff, started looking after the two properties, which shall here-in-after be referred to as suit property. She died on 2.7.1991.

2. In February 1992 the plaintiff, accompanied by her husband, visited Dharamshala to take charge of the suit property. She had never visited Dharamshala from 1969 to 1992, because she ordinarily resided in Bombay and abroad and most of the time she was in London. When she went to Dharamshala in February 1992, it was found that the defendant had built some structures on the suit property after demolishing the old structures, which were known as 'Retreat'. The plaintiff then made enquiries with the defendant and also consulted the revenue record and came to know that on 15.3.1969 mutation had been attested in favour of Smt. Raj Kumari Bhardwaj, the mother of the plaintiff, showing her to be the owner of the suit property on the strength of some affidavit, purporting to have been sworn by the plaintiff. The plaintiff never swore any affidavit in favour of her mother nor did she ever give any authority or right to her mother to deal with her property. Therefore, the aforesaid order of mutation was void ab initio. Otherwise also, the order of mutation was bad in law, because no notice of the proposed order of mutation was ever given to the plaintiff. The order of mutation is alleged to have been procured in her favour, by the mother of the plaintiff, in connivance with the Revenue officials. On the basis of the aforesaid order of mutation dated

15.3.1969, entries appeared in the Jamabandi showing the mother of the plaintiff as owner in possession of the suit property.

3. On 7.7.1979 the mother of the plaintiff sold the suit property to the defendant for a paltry sum of Rs.64,000/-. The mother of the plaintiff, being not the owner of the suit property, did not have any authority to sell the same. Therefore, the sale made by her is illegal, void and of no consequence on the right of the plaintiff.

4. Further the defendant being a foreigner could not have purchased the suit land unless some requirements, prescribed by the Reserve Bank of India and the Central Government, under Section 31 (1) of the Foreign Exchange Regulation Act, 1973, were complied with and for this reason also the sale is bad.

5. The plaintiff has, therefore, prayed for passing a decree declaring that the mutation dated 15.3.1969 of Mauza Dharamshala Khas, Chak Rehlu, Tehsil and District Kangra, sanctioned in favour of Smt. Raj KUmari Bhardwaj; the sale deed dated 7.7.1979, executed by Smt. R.K. Bhardwaj in favour of the defendant and registered at Sr.No. 216 in Book No. 1 Vol. 95 on page 205 in the office of Sub-Registrar at Dharamshala, Tehsil and District Kangra; the further mutation in favour of the defendant dated 26.2.1988, sanctioned on the basis of sale deed dated 7.7.1979 of Mauza Dharamshala Khas, Chak Rehlu, Tehsil and District Kangra, are null and void, inoperative and not binding on the rights of the plaintiff; the plaintiff is the sole and exclusive owner of the land measuring 14 Kanals 11 Marlas, Khatauni No. 392, Khata No. 218 and Khasra Nos. 1208/1153, 1089, 1061 and 1152/1090, along-with the super structure standing thereon, situated in Tika and Mauza Dharamshala, Tehsil and District Kangra, as per Jamabandi for the

year 1966-67, and land bearing Nos. 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, total 17 Kitas, measuring 5337-25, as per the latest Jamabandi for the year 1990-91. By way of further relief, she has prayed for a decree for possession of the suit property and also for recovery of damages / mesne profits. Also, she has prayed for passing a decree for rendition of accounts, regarding use and occupation of the property by the defendant since 1979.

6. Defendant has contested the suit. Certain preliminary objections have been raised. The same are that the suit is barred by time, the plaintiff has no cause of action, the suit is not properly valued for the purposes of court fee and jurisdiction, the defendant is a bona fide purchaser for consideration, the plaintiff is estopped to sue by her acts and conduct, acquiescing, the defendant had made improvements on the suit property and the suit has been filed with mala fide intention of harassing the defendant.

7. As regards the merits, it is stated that the plaintiff participated in the negotiations for the sale of the suit property in favour of the defendant and that at the time of execution of the sale deed, the husband of the plaintiff Capt. K.D. Kaushal was personally present and he even appeared before the Sub-Registrar when the deed was presented for registration. It has been denied that the plaintiff is the owner of the suit property. It is alleged that Raj Kumari, mother of the plaintiff, was shown as owner in possession of the suit property in the revenue record and the defendant verified this fact before making the purchase. It has been denied that the sale consideration was inadequate. It has also been denied that requirement of Section 31 (1)

of the Foreign Exchange Regulation Act, 1973 had not been complied with. It has also been denied that the plaintiff did not visit Dharamshala between 1969 and 1992. It has been alleged that she had been visiting Dharamshala during the aforesaid period and she herself saw the old structures being demolished and new ones being raised on the suit property.

8. Plaintiff filed replication denying the averments made in the written statement and reiterating those made in the plaint.

9. This Court, on the pleadings of the parties, framed the following issues:-

1. Whether the suit of the plaintiff is barred by limitation? OPD.
2. Whether the defendants have become owner of the disputed property by way of adverse possession? OPD
3. Whether the defendant, who is a foreign national, is a bonafide purchaser for consideration of the disputed property? OPD
4. Whether the plaintiff is estopped from filing the present suit on account of his acts and conduct? OPD
5. Whether the suit is properly valued for the purposes of Court fee and jurisdiction? OPP
6. Whether the plaintiff has no cause of action to file the suit? OPD
7. Whether the plaintiff is entitled to a decree for possession and mandatory injunction by demolition of the structures as prayed for? OPP
8. Whether the plaintiff is entitled to mesne profits? If so, how much? OPP
9. Relief(s).

10. Issue-wise findings, supported by reasons, are as under.

**Issues No. 1 & 2**

11. These issues are interlinked. Hence they are taken up together. It was argued on behalf of the defendant that the limitation in the case is governed by Article 100 of the Schedule to the Limitation Act, because the plaintiff has challenged the mutation that was attested in favour of her mother on 15.3.1969 and that the limitation prescribed under the aforesaid Article is one year, to be computed from the date of the passing of the order. He urged that the suit having been filed in the year 1995 was thus clearly barred by time.

12. An over all reading of the plaint, especially the relief part, shows that what the plaintiff claims is the possession of the suit land, on the basis of her alleged title. She has specifically stated that she was unaware of the attestation of the mutation till February, 1992 and that no notice of attestation of mutation was ever sent to her. The mutation order, copy of which is on record and which was admitted by the defendant at the time of admission / denial of documents, shows that no notice was sent to the plaintiff. Now, when the plaintiff was not a party to the mutation proceedings and no notice of those proceedings had been issued to her, Article 100 of the Limitation Act, in my considered view, should not be applicable. The suit is to be treated as one for declaration that the plaintiff is the owner of the suit property and for possession and the limitation, per Article 65 of the Schedule to the Limitation Act, will be twelve years from the date when the possession of the defendant becomes adverse to the plaintiff.

13. In the present case, of course the defendant has set up the plea of adverse possession, in the alternative, but it has not

categorically stated that it had the animus to possess the suit property adversely to the plaintiff. In fact its plea is that it had purchased the property from the mother of the plaintiff, who was recorded as owner in the revenue papers. It has nowhere stated that it knew or even had any inkling at any time before the institution of the suit that the plaintiff was the owner of the suit land. That means when the defendant came in possession of the suit land, on the basis of the sale made in its favour by the mother of the plaintiff, it did not have the requisite animus to prescribe against the present plaintiff. One can be said to have the animus to prescribe against the true owner only if he knows who the true owner is. The Hon'ble Supreme Court in **Annasaheb Bapusaheb Pateil and others vs. Balwant alias Balasaheb Babusaheb Patel etc.** and four connected matters, (AIR 1995 SC 895) has held that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. It has further been held that in deciding whether the acts alleged by a person constitute adverse possession, regards must be had to the animus of the person doing those acts, which must be ascertained from the facts and circumstances.

14. In view of the above stated position, both the issues are decided against the defendant.

**Issue No. 3**

15. The issue is not happily worded. While addressing the arguments, learned counsel for the plaintiff stated that in fact a plea has been raised in the plaint that the sale is void, because the defendant, being a foreign national, could not have purchased the suit

property without obtaining permission from the Reserve Bank of India and in reply to this plea, the defendant pleaded that permission from the Reserve Bank of India had been obtained. He further submitted that the defendant had taken the plea that it was a bona fide purchaser for consideration. He urged that the issue is a mix-up of the two pleas. In view of the aforesaid submissions, the issue is re-cast into following two issues:-

3-A. Whether the defendant, being not a citizen of India, was required to obtain permission of the Reserve Bank of India to purchase the suit land and if so, whether it (the defendant) did not obtain the requisite permission? OPP

3-B. Whether the defendant is a bona fide purchaser for consideration? OPD

**Issue No. 3-A**

16. The plaintiff herself examined a Patwari PW-4 Shri Banwari Lal and got proved through him copy of mutation order Ext. PW-4/1. Mutation order was otherwise also admitted by the defendant. It is through this order of mutation that the suit property, purchased by the defendant from the mother of the plaintiff, was mutated in its name. It is mentioned in the mutation order that permission had been granted by the Reserve Bank of India, vide its letter 795/C-432-87/88, dated 7.10.1987, subject to certain conditions, which are mentioned in the order itself. The said conditions are as follows:-

> "(i) The property so acquired should be used solely for bonafide residential purpose for self & the family.
>
> (ii) The property should not be transferred or disposed of by way of sale, lease (for a period exceeding 5 yrs), gift, mortgage

or otherwise in any manner without perior permission of the Reserve Bank of India.

(iii) No new construction on / and extensions / additions to the property should be made without prior permission.

(iv) Income, if any, accruing from the property or the sale proceeds thereof, if sold at a later date, or any income that may accrue on investment of the sale process will not be allowed to be repatriated outside India in any manner."

17. Learned counsel for the plaintiff argued that the defendant had violated conditions (i) & (iii) above, because it had raised huge commercial buildings on the suit land though the property was to be used only for bona fide residential purpose and also no permission had been obtained for raising such structure. The submission merits outright rejection for the simple reason that no such plea has been raised in the plaint and also there is no evidence to the effect that the buildings, which have been raised on the suit land, are being used for non-residential purpose or that no permission had been obtained for raising such buildings.

18. For the foregoing reasons, the issue has been answered against the plaintiff.

**Issue No. 3-B**

19. Certain facts, having bearing on the issue, are not in dispute. Sale deeds were executed in the year 1962 in respect of the suit land, in favour of the plaintiff, by the previous owners. The same are Exts. PW-2/1 and PW-2/2. On the basis of these two sale deeds mutations were entered and attested in favour of the plaintiff. Copies of the mutation orders are Exts. PW-2/3 & PW-2/4. Thereafter the name of the plaintiff appeared in the Jamabandi for the year 1966-67,

copy Ext. PW-2/5. She was recorded owner in possession. Thereafter the mutation was attested in favour of the mother of the plaintiff on 15.3.1969, copy whereof produced by the plaintiff and admitted by the defendant at the time of admission / denial of documents, is available on record. A reading of this mutation order shows that there appeared a report in the **Rojnamcha** that the plaintiff was only a **Benamidar** in respect of the suit land and that in fact the real owner was her mother Raj Kumari Bhardwaj and so the entries in the revenue papers were required to be corrected. Accordingly mutation was entered and submitted to the Revenue Officer. The Revenue Officer passed the order on 15.3.1969. The order reads that Raj Kumari, the mother of the plaintiff, appeared in the capacity of general attorney of the plaintiff and stated that the sale consideration for the two sales, executed in favour of the plaintiff in the year 1962, had been paid by her out of her own pocket and that Sushima was only a **Benamidar** and thus the real ownership vested in her. She produced an affidavit sworn by the plaintiff, in which it had been acknowledged that the price of the land had been paid by the mother of the plaintiff from her own resources and that she (the mother of the plaintiff) was the real owner, while the plaintiff was only a **Benamidar.** On the basis of the declaration made in the said affidavit, mutation was attested in favour of the mother of the plaintiff. Thereafter the name of the mother of the plaintiff appeared in the Jamabandi showing her to the owner in possession of the suit property. Copy of the Jamabandi, produced by the plaintiff and admitted to be correct by the defendant, though not formally exhibited, is also available on record. Admittedly, the possession of the suit property had been with the mother of the plaintiff from the very

beginning, that is to say, from the time of execution of the sale deeds in the year 1962 in favour of the plaintiff. It is in this background that the plea of the defendant that it is a bona fide purchaser for consideration is required to be considered.

20. Now, when the entries in the revenue papers, i.e. the Jamabandi, to which presumption of truth attaches, showed the mother of the plaintiff to be owner in possession and the physical possession of the suit property was also with the mother of the plaintiff, any person would have believed, without making any further enquiry, that she was the true owner.

21. Learned counsel representing the plaintiff submitted that the defendant having not made any enquiry with the office of the Sub-Registrar, who maintains the record of the registered documents pertaining to the transfer or creation of any charge on the immovable property, cannot be said to be a bona fide purchaser for consideration. Drawing attention of the Court to the definition of phrase “a person is said to have notice” appearing in Section 3 of the Transfer of Property Act, 1882, he urged that willful abstention from an enquiry or search which the buyer ought to have made, or gross negligence on his part, amount to the notice of the fact, which would have been known, if such enquiry or search were made or gross negligence were not there. The facts and the circumstances of the case, as noticed here-in-above, are such that no further enquiry into the title of the mother of the plaintiff was expected of a prospective vendor. Even if some enquiry was made in the office of the Sub-Registrar, which the defendant according to the submission of the learned counsel for the plaintiff did not make, that would not have yielded any result nor would have it indicated that

the mother of the plaintiff, who was recorded as owner in possession in the revenue papers and was in physical possession of the suit property, was not the owner, because no change in the ownership of the property by any registered document had taken place after the execution of the sale deed in favour of the plaintiff. According to Explanation-I to the aforesaid definition of phrase “person is said to have notice” the person is deemed to have the notice of a registered instrument effecting any transaction relating to immovable property. In the present case admittedly no transaction relating to the suit property by any registered instrument had been effected changing the position shown in the revenue record. Mutation order, sanctioned in favour of the mother of the plaintiff, reads that it was passed on the basis of an affidavit of the plaintiff acknowledging that her mother was the real owner.

22. In view of what has been stated here-in-above, the following precedents, relied upon by the learned counsel for the plaintiff, are inapplicable:-

(1) **Dwarka Das L. Shambhu Nath and others vs. Rangi Lal Munna Lal and others,** (AIR 1953 Punjab 289), wherein it has been held that where there are registered deeds of sale, it is not sufficient compliance with the provisions of Section 41 if a person merely looks at the revenue records and does not go any further.

(2) **Mehdi Hasan vs. Ram Ker,** (AIR 1982 Allahabad 92), wherein it has been held that merely inspecting the revenue record is not enough enquiry into the title of the vendor.

(3) **Guru Amarjit Singh vs. Rattan Chand and others,** [(1993) 4 SCC 349], wherein it has been held that the entries in the revenue record are not the proof of title or payment of rent.

(4) **Mst. Bui vs. Gurdip Singh,** ( 1976 P.L.J. 345 ), wherein it has been held that mutation proceedings do not determine the title or other rights in immovable property.

(5) **Natabar Parichha and others vs. Nimai Charan Misra and others,** (AIR 1952 Orissa 75), wherein it has been held that mere mutation of the name of the previous owner in favour of the vendor does not pass the title.

(6) **Khushalchand Bhagchand vs. Trimbak Ramchandra and others,** (AIR 1947 Bombay 49), wherein it has been held that where transferor is in possession and is also shown to be owner in the revenue record, transferee still should make enquiry in Sub-Registrar's office.

(7) **State of Himachal Pradesh vs. Keshav Ram and others,** ( AIR 1997 SC 2181), wherein it has been held that entry in the revenue record cannot form basis for declaration of title.

(8) **Corporation of the City of Bangalore vs. M.Papaiah and another,** (AIR 1989 SC 1809), wherein it has been held that revenue record is not document of title.

(9) **Sawarni vs. Inder Kaur and others,** [(1996) 6 SCC 223], wherein it has been held that mutation does not create or extinguish title.

(10) **Baleshwar Tewari and others vs. Sheo Jatan Tiwary and others,** [(1997) 5 SCC 112), wherein it has been held that entries

in the revenue record is a paradise of the Patwari and the tiller of the land is rarely concerned with the same.

23. In view of the above discussion, it is held that the defendant is a bona fide purchaser for consideration.

**Issues No. 4 & 7**

24. These two issues are interlinked, because while the plaintiff claims that she is the owner and that her mother, without any right, title or interest, transferred the property to the defendant, the defendant besides denying the aforesaid claim of the plaintiff, alleges that the plaintiff and her husband were in the know of the deal, which the mother of the plaintiff made with the defendant, from the very beginning and that they had even participated in the negotiations for the sale transaction and hence the plaintiff is estopped to file the suit.

25. Plaintiff's claim is that the funds for the purchase of the suit property had been provided by her. However, no evidence has been led by her in support of this claim, except her bald statement and that too in the cross-examination. Her husband, who is also her attorney and appeared as PW-3, did not say that the funds for the purchase of the two properties were arranged by the plaintiff or his father (because the plaintiff says that some money for the purchase of the property was given to her by her father-in-law). No doubt, sale deeds were executed in favour of the plaintiff, but it is the plaintiff's own plea that from the very beginning her mother had been managing and looking-after the property.

26. It is admitted by the plaintiff in her testimony that she is the only issue of her parents. It is not the case of the plaintiff that her mother was living in penury or she was greedy and wanted to inflate

her purse. In the absence of such an allegation, it can legitimately be presumed that like any other mother, the plaintiff's mother was also interested in protecting the interest of the plaintiff. This is especially so when the plaintiff was her only issue. It has come in evidence that after 1979, that is the year in which the sale was made in favour of the defendant, the mother of the plaintiff shifted to Bombay and often she would go to America to stay with a daughter of the plaintiff. DW-6 Madan Pal Singh, a resident of Dharamshala, has stated that the mother of the plaintiff sold her property situated at Dharamshala, vide sale deed Ext. PW-2/6 in favour of the defendant and that thereafter she was seen at Dharamshala only for two weeks and after that she left and never came back to Dharamshala. This part of his statement has remained unchallenged.

27. It has also come in evidence that the mother of the plaintiff had her own flat at Bombay, while the plaintiff's husband had a separate flat there. Reference in this behalf may be made to the statement of the husband of the plaintiff, who appeared in this Court as PW-3 and then appeared as PW-9 before the Local Commissioner, who was appointed to record the statements of certain witnesses at Bombay, and also his previous statement Ext. PW-9/D-3, with which he was duly confronted and the plaint Ext. PW-9/D-1, which he had filed in Small Causes Court at Bombay in the year 1986. In the said plaint, which was filed against a tenant by the plaintiff and her husband Shri K.D. Kaushal for the ejectment of the tenant from their flat bearing No. 38 on the 6$^{th}$ floor of a building known as Shankar Mahal, it is alleged that the plaintiff and her husband had been living with the mother of the present plaintiff in her flat No. 26 in the same building

and that mother of the plaintiff was not willing to keep them in her flat any more and so the ejectment of the tenant was sought. Now, when the mother of the plaintiff had stopped living at Dharamshala and had started living at Bombay in 1979, she (plaintiff) was supposed to have made some arrangements for the maintenance, upkeep and protection of the property at Dharamshala, had the property been actually hers and had it not been disposed of by her mother to her knowledge. This circumstance itself suggests that the plaintiff knew that the property at Dharamshala had been sold by her mother.

28. Also, there is evidence on record suggesting that the plaintiff and her husband K.D. Kaushal knew even before the sale of the property by the mother of the plaintiff in favour of the defendant that the mother of the plaintiff was the owner of the suit property. Plaintiff's husband in his statement, copy Ext. PW-9/D-3, which he made in the Court of Judge Small Causes and with which he was duly confronted, stated that he had started a small woolen spinning unit at Dharamshala in the year 1969-70 and the said unit remained in operation upto 1976. He stated that during the aforesaid period he had been residing at Dharamshala at his mother-in-law's place. Admittedly, the mother of the plaintiff did not have any other property except the suit property at Dharamshala. The statement of the husband of the plaintiff that he had been living at Dharamshala during the aforesaid period at his mother-in-law's place, sufficiently proves that the property at Dharamshala, i.e. the suit property, belonged to the mother of the plaintiff to the knowledge of the plaintiff and her husband K.D. Kaushal. Had the plaintiff been the owner of this property, her husband would not have stated that he had been living at his in-law's

place at Dharamshala. Instead he would have said that he had been living in his own house or in his wife's house. In his statement in the Court as PW-3, he has stated that the property at Dharamshala, i.e. the suit property, belongs to him. Now if this belongs to him, he would not have said in his statement Ext. PW-9/D-3 that he had been living at his in-law's place.

29. Further in the aforesaid statement, vide portion 'E' to 'E', the husband of the plaintiff categorically stated that his mother-in-law had sold her house at Dharamshala and after that nobody lived at Dharamshala. Further he categorically stated that neither he nor his mother-in-law had any property at Dharamshala. This statement knocks the bottom out of the plaintiff's case.

30. Another portion of this very statement, which is marked 'D' to 'D' and with which too the husband of the plaintiff was duly confronted, falsifies the plaintiff's plea that after 1962 she had never gone to Dharamshala. The portion reads that when the maker of the statement, i.e. the husband of the plaintiff, was at Dharamshala, his family used to reside some-times at Bombay and some-times at Dharamshala. As already stated, vide portion 'C' to 'C' the witness stated that from 1969 to 1976 he had been living at Dharamshala. That means the plaintiff had been visiting Dharamshala between 1969 to 1976. The property was mutated in the name of the mother of the plaintiff in the year 1969. That means at the time of the mutation and seven years thereafter the plaintiff and her husband had been at Dharamshala and, therefore, the plaintiff cannot be heard to say that she was unaware of the attestation of the mutation, because from 1962 till 1992 she had never visited Dharamshala and hence had no

occasion to know about the attestation of mutation in favour of her mother.

31. Learned counsel for the plaintiff urged that Ext. PW-9/D-3, the alleged previous statement of the husband of the plaintiff, had not been properly proved and so it could not be said to be the statement of the husband of the plaintiff. The argument has been noticed only to be rejected. The original statement was available when the husband of the plaintiff was examined as PW-9 before the Local Commissioner. As a matter of fact the entire record of the suit, filed in the Court of Judge Small Causes at Bombay, was available before the Local Commissioner and is even now available with this Court. The witness was shown the original statement, which had been recorded on different dates. He did not deny that the statement was made by him, though he did say that every page of it was not signed by him. Signing of a statement in a Court by its maker is not required though in some Courts signatures of the witnesses are obtained at the foot of the statement. The contention that the said statement was not recorded, on oath, by the Small Causes Court, will also not make any difference. As already noticed, the plaintiff does not deny having made the statement. Further the statement of the witness was recorded in parts on different dates. On the top of some parts of the statement it is type-written that the same had been recorded on S.A. while on the top of some other parts it is not so recorded. The parts, which contain portions 'B' to 'B', 'C' to 'C', 'D' to 'D' 'E' to 'E' and 'F' to 'F', which are most material and relevant, were recorded on S.A.

32. Evidence has also been led by the defendant so show that the plaintiff and her husband were aware of the deal that was

struck between the mother of the plaintiff and the defendant about the sale of the suit property. DW-12 Tenzin Wangyal, Personal Assistant to Mr. Lobsang Rikhah, who (Mr. Lobsang Rikhah) as a representative of the defendant, negotiated the deal with the mother of the plaintiff, stated that the plaintiff and her husband had participated in the negotiations. DW-3 Rakesh Narain Sharma stated that when the negotiations were held between the parties before the sale was effected, both the plaintiff and her husband had participated in such negotiations. He denied the suggestion put to him that the plaintiff and her husband were not present during negotiations. Similarly, DW-4 Shiv Shankar Sharma, Advocate, stated that when the negotiations took place between the mother of the plaintiff and the defendant, the plaintiff and her husband were present. The witness is a practising Advocate at Dharamshala. In the cross-examination he stated that sale deed was executed fifteen – twenty days after the negotiations. The sale deed is dated 7.7.1979. That means according to the testimony of this witness, DW-3 Rakesh Narain Sharma and DW-12 Tenzin Wangyal, the plaintiff and her husband were at Dharamshala some-time in the third week of June, 1979.

33. Plaintiff has tried to show that she and her husband were on a ship, named MV Vishva Prayas upto 14th / 15th July, 1979 and hence the question of their being at Dharamshala around the time of the execution of the sale deed does not arise. The plaintiff examined Capt. Vinay Asthana, PW-7 to prove this fact. The witness proved a certificate issued by him. The same is Ext. PW-7/1. Per this certificate, plaintiff's husband was signed off on or about 14th / 15th July, 1979 from port of Mangalore and he returned to Mumbai for de-

briefing and leave. The certificate or the testimony of this witness does not prove that the plaintiff's husband, while on the aforesaid ship, did not proceed on leave or that he could not have been available at Dharamshala in the third or fourth week of June or even on the date of theexecution of the sale deed, i.e. 7th July, 1979. Thus, this evidence does not rebut the testimony of the above-named three witnesses of the defendant that the plaintiff and her husband had participated in the negotiations for the sale of the suit property, which took place between the plaintiff's mother and the defendant.

34. Learned counsel for the plaintiff urged that the affidavit, on the basis of which the mutation was attested in favour of the mother of the plaintiff in the year 1963, was not available on the record of mutation proceedings, as per testimony of a witness summoned from the office of the concerned Revenue Officer, and this fact indicated that the Revenue officials acted in connivance with the mother of the plaintiff to attest the mutation. It is a matter of common knowledge that the documents, on the basis of which mutations are entered and attested, are not retained by the Revenue Officers attesting the mutation. The same are simply seen and then returned to the party presenting the same.

35. The learned counsel then urged that by an unregistered affidavit immovable property, worth more than one hundred rupees, cannot be transferred and since the alleged affidavit of the plaintiff was not registered, the mother of the plaintiff could not have acquired the title from the plaintiff. A reading of the mutation order shows that through the affidavit the plaintiff acknowledged that she was only a **Benamidar** and that the real owner was her mother. Such an

acknowledgement does not amount to declaration of any right, title or interest in the immovable property and hence does not call for compulsory registration. In this view of the matter, I find support from a judgment of the Privy Council in **Bageshwari Charan Singh vs. Thakurain Jagarnath Kuari and another,** (AIR 1932 Privy Council 55).

36. As an upshot to the above discussion, both the issues, i.e. Issues No. 4 and 7, are decided in favour of the defendant and against the plaintiff.

**Issue No. 5**

37. Learned counsel for the defendant did not press the objection pertaining to the court fee and jurisdiction nor did he point out that the suit is not properly valued for court fee and jurisdiction purposes. So the issue is found in favour of the plaintiff.

**Issue No. 6**

38. In view of the findings on issues No. 7 and 4, this issue is also decided in favour of the defendant and against the plaintiff.

**Issue No. 8**

39. In view of the findings on issues No. 7 and 4, this issue is answered against the plaintiff and in favour of the defendant.

**Relief.**

40. As a result of the above findings, the suit is dismissed with costs. Decree sheet be drawn accordingly.

**May 10, 2006 (BC)** **( Surjit Singh )**
**Judge**